

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 10, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1084

Introduced by Assembly Member Adams

February 27, 2009

An act to amend ~~Section 66023~~ *Sections 65961, 66023, and 66452.22* of, and to add Section 66019 to, the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as amended, Adams. Local planning: development projects: fees.

(1) Existing law extends by 24 months the expiration date of any tentative or vesting tentative subdivision map or parcel map, as the case may be, for which a tentative or vesting tentative map has been approved that had not expired as of July 15, 2009, and that will expire before January 1, 2012.

Existing law prohibits a city, county, or city and county from requiring as a condition to the issuance of any building permit or equivalent permit for single- or multiple-family residential units conformance with or the performance of any conditions that the city, county, or city and

county could have lawfully imposed as a condition to the previously approved tentative or parcel map for a period of 3 years following recordation of the final map or parcel map for the subdivision.

This bill would maintain this provision but recast it within the Government Code.

(2) Notwithstanding the above provision, existing law provides that a city, county, or city and county is not prohibited from levying a fee or imposing a condition that requires the payment of a fee upon the issuance of a building permit or after the issuance.

This bill would delete this provision and instead provide that, for purposes only of a tentative subdivision map or parcel map that is extended by 24 months pursuant to Section 66452.22, a city, county, or city and county is not prohibited from levying a fee or imposing a condition that requires the payment of a fee, including an adopted fee that is not included within an applicable zoning ordinance, upon the issuance of a building permit.

(1)

(3) The Mitigation Fee Act requires a local agency to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to adopting an ordinance, resolution, or other legislative enactment adopting a specified type of new fee or approving an increase in a specified type of existing fee. The act also requires the local agency to publish, in accordance with a specified provision of law, notice of the time and place of the meeting, including a general explanation of the matter to be considered. The act provides that any cost incurred by a local agency in conducting the hearing may be recovered as part of the fees which were the subject of the hearing.

This bill would additionally require a city, county, or city and county to mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that specified data is available, at least 14 days prior to the first meeting to any interested party who has filed a written request with the city, county, or city and county for mailed notice of a meeting on a new or increased fee to be enacted by the city, county, or city and county. The bill would authorize the legislative body of the city, county, or city and county to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The bill would also authorize the legislative body to send the notices electronically. The bill would require a city, county, or city and county to make available to the public data indicating the amount of cost, or estimated cost, required to provide

the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The bill would also require any new or increased fee adopted by a city, county, or city and county to be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows specified procedures. By adding to the duties of cities, counties, and cities and counties, this bill would impose a state-mandated local program. *The bill would authorize a city, county, or city and county that receives a request for mailed notice pursuant to the above provision, or a local agency that receives a request for mailed notice pursuant to another specified provision, to provide notice via electronic mail for those who specifically request electronic mail notification. The bill would specify that this electronic mail notification operates as an alternative to the mailed notice required by the above provisions.*

(2)

(4) Existing law authorizes any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency is authorized to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable. The local agency is authorized to recover the cost of having the audit conducted by an independent auditor from the person who requests the audit, and the audit is required to conform to generally accepted auditing standards.

This bill would additionally authorize any person to request an audit to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any public facility, as defined, provided by the local agency. The bill would also require the local agency to retain an independent auditor only if the person requesting the audit deposits with the local agency the amount of the agency's reasonable estimation of the cost of the audit. The bill would require the local agency to adjust the amount of any fee or charge to the extent it determines that the fee or charge does not meet specified requirements. By adding to the duties of local agencies, this bill would impose a state-mandated local program.

(3)

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65961 of the Government Code is
2 amended to read:

3 65961. Notwithstanding any other provision of law, except as
4 provided in ~~Section 66452.22, relating to the extension of the~~
5 ~~expiration date for subdivisions subject to that section~~ subdivisions
6 (e) and (f), upon approval or conditional approval of a tentative
7 map for a subdivision of single- or multiple-family residential
8 units, or upon recordation of a parcel map for such a subdivision
9 for which no tentative map was required, during the five-year
10 period following recordation of the final map or parcel map for
11 the subdivision, a city, county, or city and county shall not require
12 as a condition to the issuance of any building permit or equivalent
13 permit for such single- or multiple-family residential units,
14 conformance with or the performance of any conditions that the
15 city or county could have lawfully imposed as a condition to the
16 previously approved tentative or parcel map. Nor shall a city,
17 county, or city and county withhold or refuse to issue a building
18 permit or equivalent permit for failure to conform with or perform
19 any conditions that the city, county, or city and county could have
20 lawfully imposed as a condition to the previously approved
21 tentative or parcel map. However, the provisions of this section
22 shall not prohibit a city, county, or city and county from doing any
23 of the following:

24 (a) Imposing conditions or requirements upon the issuance of
25 a building permit or equivalent permit which could have been
26 lawfully imposed as a condition to the approval of a tentative or
27 parcel map if the local agency finds it necessary to impose the
28 condition or requirement for any of the following reasons:

1 (1) A failure to do so would place the residents of the
2 subdivision or of the immediate community, or both, in a condition
3 perilous to their health or safety, or both.

4 (2) The condition is required in order to comply with state or
5 federal law.

6 (b) Withholding or refusing to issue a building permit or
7 equivalent permit if the local agency finds it is required to do so
8 in order to comply with state or federal law.

9 (c) Assuring compliance with the applicable zoning ordinance.

10 (d) This section shall also apply to a city or city and county
11 which incorporates on or after January 1, 1985, and which includes
12 within its boundaries any areas included in the tentative or parcel
13 map described in this section.

14 When the incorporation includes areas included in the tentative
15 or parcel map described in this section, “a condition that the city
16 could have lawfully imposed as a condition to the previously
17 approved tentative or parcel map,” as used in this section, refers
18 to conditions the county could have imposed had there been no
19 incorporation.

20 *(e) For purposes only of a tentative subdivision map or parcel*
21 *map that is extended pursuant to Section 66452.22, the five-year*
22 *period described in this section shall be three years.*

23 *(f) For purposes only of a tentative subdivision map or parcel*
24 *map that is extended pursuant to Section 66452.22, this section*
25 *does not prohibit a city, county, or city and county from levying a*
26 *fee or imposing a condition that requires the payment of a fee,*
27 *including an adopted fee that is not included within an applicable*
28 *zoning ordinance, upon the issuance of a building permit,*
29 *including, but not limited to, a fee defined in Section 66000.*

30 **SECTION 1.**

31 **SEC. 2.** Section 66019 is added to the Government Code, to
32 read:

33 66019. (a) As used in this section:

34 (1) “Fee” means a fee as defined in Section 66000, but does not
35 include any of the following:

36 (A) A fee authorized pursuant to Section 66013.

37 (B) A fee authorized pursuant to Section 17620 of the Education
38 Code, or Sections 65995.5 and 65995.7.

39 (C) Rates or charges for water, sewer, or electrical services.

40 (D) Fees subject to Section 66016.

1 (2) “Party” means a person, entity, or organization representing
2 a group of people or entities.

3 (3) “Public facility” means a public facility as defined in Section
4 66000.

5 (b) For any fee, notice of the time and place of the meeting,
6 including a general explanation of the matter to be considered, and
7 a statement that the data required by this subdivision is available
8 shall be mailed at least 14 days prior to the first meeting to an
9 interested party who files a written request with the city, county,
10 or city and county for mailed notice of a meeting on a new or
11 increased fee to be enacted by the city, county, or city and county.
12 Any written request for mailed notices shall be valid for one year
13 from the date on which it is filed unless a renewal request is filed.
14 Renewal requests for mailed notices shall be filed on or before
15 April 1 of each year. The legislative body of the city, county, or
16 city and county may establish a reasonable annual charge for
17 sending notices based on the estimated cost of providing the
18 service. The legislative body may send the notice electronically.
19 At least 10 days prior to the meeting, the city, county, or city and
20 county shall make available to the public the data indicating the
21 amount of cost, or the estimated cost, required to provide the public
22 facilities and the revenue sources anticipated to fund those public
23 facilities, including general fund revenues. The new or increased
24 fee shall be effective no earlier than 60 days following the final
25 action on the adoption or increase of the fee, unless the city, county,
26 or city and county follows the procedures set forth in subdivision
27 (b) of Section 66017.

28 (c) *If a city, county, or city and county receives a request for*
29 *mailed notice pursuant to this section, or a local agency receives*
30 *a request for mailed notice pursuant to Section 66016, the city,*
31 *county, or city and county or other local agency may provide the*
32 *notice via electronic mail for those who specifically request*
33 *electronic mail notification. A city, county, city or county, or other*
34 *local agency that provides electronic mail notification pursuant*
35 *to this subdivision shall send the electronic mail notification to*
36 *the electronic mail address indicated in the request. The electronic*
37 *mail notification authorized by this subdivision shall operate as*
38 *an alternative to the mailed notice required by this section.*

1 ~~SEC. 2.~~

2 SEC. 3. Section 66023 of the Government Code is amended
3 to read:

4 66023. (a) Any person may request an audit in order to
5 determine whether any fee or charge levied by a local agency
6 exceeds the amount reasonably necessary to cover the cost of any
7 product, public facility, as defined in Section 66000, or service
8 provided by the local agency. If a person makes that request, the
9 legislative body of the local agency may retain an independent
10 auditor to conduct an audit to determine whether the fee or charge
11 is reasonable, but is not required to conduct the audit if an audit
12 has been performed for the same fee within the previous 12 months.

13 (b) To the extent that the audit determines that the amount of
14 any fee or charge does not meet the requirements of this section,
15 the local agency shall adjust the fee accordingly. This subdivision
16 does not apply to a fee authorized pursuant to Section 17620 of
17 the Education Code, or Sections 65995.5 and 65995.7.

18 (c) The local agency shall retain an independent auditor to
19 conduct an audit only if the person who requests the audit deposits
20 with the local agency the amount of the local agency's reasonable
21 estimate of the cost of the independent audit. At the conclusion of
22 the audit, the local agency shall reimburse unused sums, if any, or
23 the requesting person shall pay the local agency the excess of the
24 actual cost of the audit over the sum which was deposited.

25 (d) Any audit conducted by an independent auditor to determine
26 whether a fee or charge levied by a local agency exceeds the
27 amount reasonably necessary to cover the cost of providing the
28 product or service shall conform to generally accepted auditing
29 standards.

30 (e) The procedures specified in this section shall be alternative
31 and in addition to those specified in Section 54985.

32 (f) The Legislature finds and declares that oversight of local
33 agency fees is a matter of statewide interest and concern. It is,
34 therefore, the intent of the Legislature that this chapter shall
35 supersede all conflicting local laws and shall apply in charter cities.

36 (g) This section shall not be construed as granting any additional
37 authority to any local agency to levy any fee or charge which is
38 not otherwise authorized by another provision of law, nor shall its
39 provisions be construed as granting authority to any local agency

1 to levy a new fee or charge when other provisions of law
2 specifically prohibit the levy of a fee or charge.

3 *SEC. 4. Section 66452.22 of the Government Code is amended*
4 *to read:*

5 66452.22. (a) The expiration date of any tentative or vesting
6 tentative subdivision map or parcel map for which a tentative or
7 vesting tentative map, as the case may be, has been approved that
8 has not expired ~~on the date that the act that added this section~~
9 ~~became effective July 15, 2009~~, and that will expire before January
10 1, 2012, shall be extended by 24 months.

11 (b) The extension provided by subdivision (a) shall be in
12 addition to any extension of the expiration date provided for in
13 Section 66452.6, 66452.11, 66452.13, 66452.21, or 66463.5.

14 (c) Any legislative, administrative, or other approval by any
15 state agency that pertains to a development project included in a
16 map that is extended pursuant to subdivision (a) shall be extended
17 by 24 months if this approval has not expired ~~on the date that the~~
18 ~~act that added this section became effective July 15, 2009~~. This
19 extension shall be in addition to any extension provided for in
20 Sections 66452.13 and 66452.21.

21 (d) (1) For purposes of this section, the determination of whether
22 a tentative subdivision map or parcel map expires before January
23 1, 2012, shall count only those extensions of time pursuant to
24 subdivision (e) of Section 66452.6 or subdivision (c) of Section
25 66463.5 approved on or before ~~the date that the act that added this~~
26 ~~section became effective July 15, 2009~~ and any additional time in
27 connection with the filing of a final map pursuant to subdivision
28 (a) of Section 66452.6 for a map that was recorded on or before
29 ~~the date that the act that added this section became effective July~~
30 ~~15, 2009~~.

31 (2) The determination made pursuant to this subdivision shall
32 not include any development moratorium or litigation stay allowed
33 or permitted by Section 66452.6 or 66463.5.

34 ~~(e) Section 65961 applies to a tentative subdivision map or~~
35 ~~parcel map that relies on the 24-month extension pursuant to this~~
36 ~~section, except for both of the following:~~

37 ~~(1) The five-year period described in Section 65961 shall be~~
38 ~~three years.~~

39 ~~(2) Section 65961 does not prohibit a city, county, or city and~~
40 ~~county from levying a fee or imposing a condition that requires~~

1 the payment of a fee upon the issuance of a building permit or after
2 the issuance, including, but not limited to, a fee as defined in
3 Section 66000.

4 (e) The provisions of Section 65961 relating to conditions that
5 may be imposed upon or after a building permit for a subdivision
6 of single- or multiple-family residential units or a parcel map for
7 a subdivision for which no tentative map was required, are
8 modified as set forth in subdivisions (e) and (f) of Section 65961
9 for tentative maps extended pursuant to this section.

10 ~~SEC. 3.~~

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.